

CAUSE NO. CC-15-03739-E

RENEE SMITH,
Plaintiff,

v.

BRAUM'S, INC. and BRAUM'S ICE
CREAM STORE INC. #159,
Defendants.§
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IN THE COUNTY COURT

AT LAW NO. 5

DALLAS COUNTY, TEXAS

**DEFENDANTS BRAUM'S INC. AND BRAUM'S ICE CREAM STORE INC. #159
ORIGINAL ANSWER, GENERAL DENIAL AND AFFIRMATIVE DEFENSES**

COMES NOW, Braum's, Inc. (hereinafter referred to as "Braum's") and "Braum's Ice Cream Store Inc. #159 (improperly named by Plaintiff as a party), named Defendants in the above-styled and numbered cause, and files this their Original Answer, General Denial and Affirmative Defenses, and would respectfully state and show this Court as follows:

**I.
GENERAL DENIAL**

Pursuant to TEXAS RULE OF CIVIL PROCEDURE 92, Defendants hereby deny each and every, all and singular, the material allegations contained in Plaintiff's Original Petition, and demand that Plaintiff be required to prove her allegations by a preponderance of the evidence and as required by law.

**II.
AFFIRMATIVE DEFENSES**

Pleading further, and in the affirmative, Defendants allege that the injuries and damages alleged by Plaintiff are due to Plaintiff's own negligence in that her failure to exercise ordinary care proximately caused, in whole or in part, the alleged injuries and damages complained of by Plaintiff. Plaintiff's acts and omissions, whether taken together or separately, were the sole

DEFENDANTS BRAUM'S INC. AND BRAUM'S ICE CREAM STORE INC. #159 ORIGINAL ANSWER,
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proximate cause, or a proximate cause of the injuries and damages Plaintiff has alleged in this lawsuit. Any recovery by Plaintiff is therefore barred, or alternatively should be reduced in accordance with the applicable law.

Pleading further, and in the affirmative, Defendants would show that the alleged occurrence made the basis of this lawsuit was the result of circumstances and/or events that were not of Defendants' own creation. Defendants would further show that it acted just as a similarly situated reasonable corporation would have acted under the same or similar circumstances to the incident made the basis of this lawsuit.

Pleading further, and in the affirmative, Defendants invoke §41.0105 of the TEXAS CIVIL PRACTICE & REMEDIES CODE concerning Plaintiff's claim for the recovery of health care expenses and other related damages, past and future.

Pleading further, and in the alternative, Defendants would further show the Court that any alleged recovery by Plaintiff for pre-judgment and post-judgment interest should be governed by the applicable statutes and codes set forth herein in the State of Texas. Specifically, Defendants further allege that Plaintiff's claims for pre-judgment interest are limited by the dates and amounts set forth in Section 304.101 of the TEXAS FINANCE CODE.

Pleading further, and in the alternative, Defendants would show that the entity identified as Braum's Ice Cream Store Inc. #159 is not a Texas Corporation. Plaintiff has identified the wrong entity as the owner for the realty for the Braum's store located at 1331 Mockingbird Lane, Sulphur Springs, Texas. The entity named by Plaintiff is not a proper entity and therefore this alleged entity does not own the realty and does not have any alleged potential liability toward the Plaintiff.



WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that this matter be set for trial, with notice to the Plaintiff, and that upon completion of the trial thereof the Court grant that Plaintiff take nothing by this suit, that Defendants be discharged without liability, and for such other and further relief, both general and special, both at law and in equity, to which Defendants may show to be justly entitled.

Respectfully submitted,

By: 

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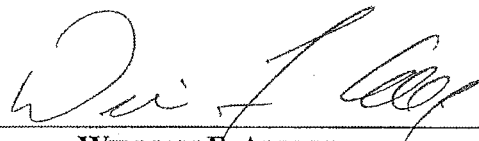
ATTORNEYS FOR DEFENDANTS

**BRAUM'S, INC. and BRAUM'S ICE CREAM
STORE INC #159**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was mailed via certified mail, return receipt requested to the following attorney(s) of record on this the 12th day of August, 2015.

Daryoush Toofanian
RAD LAW FIRM, P.C.
12900 Preston Road, Suite 900
Dallas, Texas 75230



WILLIAM F. ALLRED

DEFENDANTS BRAUM'S INC. AND BRAUM'S ICE CREAM STORE INC. #159 ORIGINAL ANSWER,
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